

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

LLYOD DEMOSS,)
)
)
Plaintiff,)
)
)
v.) Case No. _____
)
)
TRIUMPH FOODS, LLC d/b/a)
TRIUMPH FOODS,)
)
Defendants.)

DEFENDANT TRIUMPH FOODS, LLC NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1441 *et seq.*, Defendant Triumph Foods, LLC (“Triumph” or “Defendant”), by and through the undersigned counsel of record, hereby gives notice of the removal of this action from the Circuit Court of Buchanan County, Missouri, to the United States District Court for the Western District of Missouri, Western Division. Defendant removes the case without waiving, but reserving all procedural and substantive rights and defenses. Defendant states the following in support of removal:

1. On or about September 18, 2015, Plaintiff filed his Petition for Damages against Defendant in the Circuit Court of Buchanan County, Missouri, captioned *Llyod DeMoss v. Triumph Foods, LLC d/b/a Triumph Foods*, Case No. 15BU-CV03231 (the “State Court Action”).
2. In his Petition, Plaintiff asserts a claim for age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* (Petition, Count II).
3. Accordingly, this Court has original federal question jurisdiction under 28 U.S.C. § 1331 because Count II of Plaintiff’s Petition is based on a claim asserted under the laws of the United States of America.

4. Plaintiff has also asserted a claim for retaliatory discharge under Missouri's workers' compensation laws, which is nonremovable pursuant to 28 U.S.C. § 1445(c). (Petition, Count I).

5. Despite plaintiff's inclusion of a nonremovable claim, this action is removable under the federal removal statute, which provides that “[i]f a civil action includes a claim arising under the Constitution, laws, or treaties of the United States . . . and . . . a claim that has been made nonremovable by statute, the entire action may be removed if the action would be removable without the inclusion of the [nonremovable claim].” 28 U.S.C. § 1441(c).

6. Defendant was served with the Summons and Petition in the State Court Action on September 22, 2015. The date on or before which Defendant is required by law to remove this action under the provisions of 28 U.S.C. § 1446(b) is October 22, 2015, and this Notice of Removal is timely filed.

7. The Circuit Court of Buchanan County, Missouri, is located within the Western District of Missouri. Local Rule 3.1(a). Venue is proper in this Court because it is the “district and division embracing the place where such [state court] action is pending.” 28 U.S.C. § 1441(a). Filing this Notice of Removal in the Clerk’s office in Kansas City, Missouri is appropriate.

8. In accordance with 28 U.S.C. § 1446(a), a copy of the entire file in the State Court Action, including all pleadings and papers that have been filed and served on Defendant in the State Court Action, is attached to this Notice as **Exhibit 1**. Plaintiff has not serviced upon Defendant any other process, pleadings or orders.

9. Attached to this Notice as **Exhibit 2** is a copy of the docket sheet from the State Court Action.

10. Defendant will, promptly upon filing this Notice of Removal, give written notice to Plaintiff's counsel and will file a copy of this Notice of Removal with the Circuit Court of Buchanan County, Missouri, as required by 28 U.S.C. §1446(d). Attached to this Notice as **Exhibit 3** is a copy of the Notice of Defendant's Notice of Removal to Federal Court which is being filed in the Circuit Court of Buchanan County, Missouri.

11. Exhibits 1, 2, and 3 constitute all records and proceedings had in the State Court Action.

WHEREFORE, Defendant hereby notifies this Court, Plaintiff, and the Circuit Court of Cole County, Missouri, that the above-captioned matter has been removed to this Court.

Respectfully submitted,

/s/ Melody L. Rayl

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ATTORNEYS FOR DEFENDANT
TRIUMPH FOODS

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October, 2015, a copy of the above and foregoing was electronically by the Court's CM/ECF system, which sends a notice of electronic filing to:

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ATTORNEY FOR PLAINTIFF

/s/ *Melody L. Rayl*
Attorney for Defendant